

**LEMON GROVE SANITATION DISTRICT
AGENDA ITEM SUMMARY**

Item No. 1.D
Mtg. Date August 1, 2017
Dept. Public Works

Item Title: Approving a Professional Services Agreement with Dexter Wilson Engineering, Inc. for Wastewater Consulting Services

Staff Contact: Mike James, Assistant City Manager / Public Works Director

Recommendation:

Adopt a resolution (**Attachment A**) approving a professional services agreement (**Attachment A – Exhibit 1**) with Dexter Wilson Engineering, Inc. for Wastewater Consulting Services.

Item Summary:

Since July 2016, the District has partnered with Dexter Wilson Engineering, Inc. to provide wastewater consulting services as they related to the District's participation with the San Diego Metro Wastewater Joint Powers Authority (Metro JPA) and Technical Advisory Committee (Metro TAC). Mr. Wilson's vast professional work experience, technical knowledge and pragmatic solutions prove to be a tremendous asset to the District and the Metro JPA. In fact, the Metro JPA recognized Mr. Wilson's benefit to the entire JPA, so it has authorized a maximum reimbursement to the District of \$77,550 for work that he performs to the benefit the Metro JPA. Staff anticipates that the reimbursement agreement between the District and Metro JPA will be finalized in July/August 2017. The District's agreement with Mr. Wilson (**Attachment A – Exhibit 1**) highlights a scope of work that will allow Mr. Wilson to continue to support the District with his expertise through June 30, 2018. Examples of Mr. Wilson's anticipated duties include: attending Metro JPA/TAC meetings, volunteering for and attending any sub-committees, supporting the District's Board representative and staff, etc. Support may include capital facility analysis, cost allocation study, reports/studies, and professional opinions. Staff recommends that the District Board adopts the resolution (**Attachment A**) approving a professional services agreement (**Attachment A – Exhibit 1**) with Dexter Wilson Engineering, Inc. for Wastewater Consulting Services.

Fiscal Impact:

In Fiscal Year 2017-18, \$100,840 was budgeted in the Sanitation District Fund. However, up to \$77,550 of that total may be reimbursed to the District if those expenditures are directly related to the Metro JPA activities.

Environmental Review:

- | | |
|---|---|
| <input checked="" type="checkbox"/> Not subject to review | <input type="checkbox"/> Negative Declaration |
| <input type="checkbox"/> Categorical Exemption, Section [] | <input type="checkbox"/> Mitigated Negative Declaration |

Public Information:

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> Newsletter article | <input type="checkbox"/> Notice to property owners within 300 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting | |

Attachments:

- A. Resolution

Attachment A

RESOLUTION NO. 2017 -

RESOLUTION OF THE DISTRICT BOARD OF THE LEMON GROVE SANITATION DISTRICT APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH DEXTER WILSON ENGINEERING, INCORPORATED FOR WASTEWATER CONSULTING SERVICES

WHEREAS, in July 2016, the District partnered with Dexter Wilson Engineering, Inc. to provide wastewater consulting services as they related to the District's participation with the San Diego Metro Wastewater Joint Powers Authority and the Technical Advisory Committee; and

WHEREAS, Dexter Wilson Engineering Company, Inc. has provided the District with a vast amount of professional work experience, technical knowledge and pragmatic solutions that were highly beneficial to the District staff as well as the Metro JPA; and

WHEREAS, District staff recommends continuing the consulting agreement with Dexter Wilson Engineering, Inc. to continue to support the Metro JPA's Board Representative and District staff; and

NOW, THEREFORE, BE IT RESOLVED that the District Board of the Lemon Grove Sanitation District hereby:

1. Approves a professional services agreement (**Exhibit 1**) with Dexter Wilson Engineering, Incorporated in an amount not to exceed \$100,840; and
2. Authorizes the City Manager or her designee to execute and manage all related documents.

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Attachment A – Exhibit 1

**AGREEMENT
BY AND BETWEEN
THE LEMON GROVE SANITATION DISTRICT
AND
DEXTER WILSON ENGINEERING, INC.**

THIS AGREEMENT is approved and effective upon the date of the last signature, by and between the LEMON GROVE SANITATION DISTRICT, an enterprise district (the “DISTRICT”), and DEXTER WILSON ENGINEERING, INC. a professional engineering company (the “CONSULTANT”).

R E C I T A L S

WHEREAS, the DISTRICT desires to employ a CONSULTANT to provide professional wastewater guidance, research and direction regarding the District’s wastewater activities and its involvement with the Metropolitan Wastewater Joint Powers Authority.

WHEREAS, the DISTRICT has determined that the CONSULTANT is qualified by experience and ability to perform the services desired by the DISTRICT, and the CONSULTANT is willing to perform such services.

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY AGREE AS FOLLOWS:

1. **ENGAGEMENT OF CONSULTANT.** The DISTRICT hereby agrees to engage the CONSULTANT and the CONSULTANT hereby agrees to perform the services hereinafter set forth in accordance with all terms and conditions contained herein.

The CONSULTANT represents that all services required hereunder will be performed directly by the CONSULTANT or under direct supervision of the CONSULTANT.

2. **SCOPE OF SERVICES.** The CONSULTANT will perform services as set forth below:

- Attend Metropolitan Wastewater Commission/Joint Powers Authority (Metro JPA) and Technical Advisory Committee (Metro TAC) meetings.
 - Any subcommittee appointment requests that result from the JPA or TAC will also be part of the attendance and participation requirements.
- Provide support as needed to the District’s appointee on the Metro JPA and the Metro TAC Chair.
 - Examples of support include capital facility analysis, cost allocation, reports, studies, and professional opinions.

The CONSULTANT shall be responsible for all research and reviews related to the work and shall not rely on personnel of the DISTRICT for such services, except as authorized in advance by the DISTRICT. The CONSULTANT shall appear at meetings as needed to keep staff and DISTRICT BOARD advised of the progress on the project.

The DISTRICT may unilaterally, or upon request from the CONSULTANT, from time to time reduce or increase the Scope of Services to be performed by the CONSULTANT under this

Attachment A – Exhibit 1

Agreement. Upon doing so, the DISTRICT and the CONSULTANT agree to meet in good faith and confer for the purpose of negotiating a corresponding reduction or increase in the compensation associated with said change in services.

3. PROJECT COORDINATION AND SUPERVISION.

The Assistant City Manager / Public Works Director or designee is designated as the primary point of contact for the DISTRICT and will monitor the progress and execution of this Agreement. The CONSULTANT shall assign a single Project Director to provide supervision and have overall responsibility for the progress and execution of this Agreement for the CONSULTANT. Dexter Wilson is designated as the primary point of contact for the CONSULTANT.

4. COMPENSATION AND PAYMENT. The compensation for the CONSULTANT shall be based on monthly billings covering actual work performed. Billings shall include labor classifications, respective rates, hours worked and also materials, if any. The total cost for all work is based on estimated hours of work per the rates listed in Section 22 of this agreement. The agreement shall not to exceed one hundred thousand eight hundred forty dollars and zero cents (\$100,840.00) (the Base amount) without prior written authorization from the Assistant City Manager / Public Works Director or designee. Monthly invoices will be processed for payment and remitted within thirty (30) days from receipt of invoice, provided that work is accomplished consistent with as determined by and in the sole discretion of the DISTRICT.

The CONSULTANT shall maintain all books, documents, papers, employee time sheets, accounting records, and other evidence pertaining to costs incurred and shall make such materials available at its office at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment under this Agreement, for inspection by the DISTRICT and for furnishing of copies to the DISTRICT, if requested.

5. LENGTH OF AGREEMENT. This agreement will take effect on July 1, 2017 and last 12-months through June 30, 2018. The agreement may be extended for 12 months, not to go beyond June 30, 2019, by written agreement of the parties, and subject to both DISTRICT BOARD'S appropriation of funds and DISTRICT BOARD'S authorization of such agreement extension(s).

6. DISPOSITION AND OWNERSHIP OF DOCUMENTS. The Memoranda, Reports, Maps, Drawings, Plans, Specifications and other documents prepared by the CONSULTANT for this Project, whether paper or electronic, shall become the property of the DISTRICT for use with respect to this Project, and shall be turned over to the DISTRICT upon completion of the Project, or any phase thereof, as contemplated by this Agreement. By accepting payment for completion, filing and delivering documents as called for in this paragraph, the CONSULTANT discharges the DISTRICT of all of the DISTRICT's payment obligations and liabilities under this agreement.

Contemporaneously with the transfer of documents, the CONSULTANT hereby assigns to the DISTRICT and CONSULTANT thereby expressly waives and disclaims, any copyright in, and the right to reproduce, all written material, drawings, plans, specifications or other work prepared under this agreement, except upon the DISTRICT's prior authorization regarding reproduction, which authorization shall not be unreasonably withheld. The CONSULTANT shall, upon request of the DISTRICT, execute any further document(s) necessary to further effectuate this waiver and disclaimer.

Attachment A – Exhibit 1

The CONSULTANT agrees that the DISTRICT may use, reuse, alter, reproduce, modify, assign, transfer, or in any other way, medium or method utilize the CONSULTANT's written work product for the DISTRICT's purposes, and the CONSULTANT expressly waives and disclaims any residual rights granted to it by Civil Code Sections 980 through 989 relating to intellectual property and artistic works.

Any modification or reuse by the DISTRICT of documents, drawings or specifications prepared by the CONSULTANT shall relieve the CONSULTANT from liability under Section 14 but only with respect to the effect of the modification or reuse by the DISTRICT, or for any liability to the DISTRICT should the documents be used by the DISTRICT for some project other than what was expressly agreed upon within the Scope of this project, unless otherwise mutually agreed.

7. INDEPENDENT CONSULTANT. Both parties hereto in the performance of this Agreement will be acting in an independent consultant and not as agents, employees, partners or joint ventures with one another. Neither the CONSULTANT nor the CONSULTANT'S employees are employees of the DISTRICT and are not entitled to any of the rights, benefits, or privileges of the DISTRICT's employees, including but not limited to retirement, medical, unemployment, or workers' compensation insurance.

This Agreement contemplates the personal services of the CONSULTANT and the CONSULTANT's employees, and it is recognized by the parties that a substantial inducement to the DISTRICT for entering into this Agreement was, and is, the professional reputation and competence of the CONSULTANT and its employees. Neither this Agreement nor any interest herein may be assigned by the CONSULTANT without the prior written consent of the DISTRICT. Nothing herein contained is intended to prevent the CONSULTANT from employing or hiring as many employees, or SUB-CONSULTANTS, as the CONSULTANT may deem necessary for the proper and efficient performance of this Agreement. All agreements by CONSULTANT with its SUB-CONSULTANT(s) shall require the SUB-CONSULTANT to adhere to the applicable terms of this Agreement.

8. CONTROL. Neither the DISTRICT nor its officers, agents or employees shall have any control over the conduct of the CONSULTANT or any of the CONSULTANT's employees except as herein set forth, and the CONSULTANT expressly agrees not to represent that the CONSULTANT or the CONSULTANT's agents, servants, or employees are in any manner agents, servants or employees of the DISTRICT, it being understood that the CONSULTANT, its agents, servants, and employees are as to the DISTRICT wholly independent CONSULTANTS and that the CONSULTANT's obligations to the DISTRICT are solely such as are prescribed by this Agreement.

9. COMPLIANCE WITH APPLICABLE LAW. The CONSULTANT, in the performance of the services to be provided herein, shall comply with all applicable State and Federal statutes and regulations, and all applicable ordinances, rules and regulations of the LEMON GROVE SANITATION DISTRICT / CITY OF LEMON GROVE, whether now in force or subsequently enacted. The CONSULTANT, and each of its SUB-CONSULTANTS, shall obtain and maintain a current CITY OF LEMON GROVE business license prior to and during performance of any work pursuant to this Agreement.

10. LICENSES, PERMITS, ETC. The CONSULTANT represents and covenants that it has all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. The CONSULTANT represents and covenants that the CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement,

Attachment A – Exhibit 1

any license, permit, or approval which is legally required for the CONSULTANT to practice its profession. Submittals Required with the Agreement. Failure of the CONSULTANT to provide the following documentation with the executed agreement will cause delay in the agreement being executed by the DISTRICT:

- A. Insurance as specified in Section 15 of this agreement;
- B. Taxpayer Identification Number (W-9)
<http://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- C. IRS Letter of Non-Profit 501 (c) (3) (If Applicable)
- D. DISTRICT's Equal Opportunity Contracting Program requirement;
- E. Certification for a Drug-Free Workplace;
- F. DISTRICT Business License;
- G. CONSULTANT Standards Pledge of Compliance.

11. **STANDARD OF CARE.**

A. The CONSULTANT, in performing any services under this Agreement, shall perform in a manner consistent with that level of care and skill ordinarily exercised by members of the CONSULTANT'S trade or profession currently practicing under similar conditions and in similar locations. The CONSULTANT shall take all special precautions necessary to protect the CONSULTANT's employees and members of the public from risk of harm arising out of the nature of the work and/or the conditions of the work site.

B. Unless disclosed in writing prior to the date of this agreement, the CONSULTANT warrants to the DISTRICT that it is not now, nor has it for the five (5) years preceding, been debarred by a governmental agency or involved in debarment, arbitration or litigation proceedings concerning the CONSULTANT's professional performance or the furnishing of materials or services relating thereto.

C. The CONSULTANT is responsible for identifying any unique products, treatments, processes or materials whose availability is critical to the success of the project the CONSULTANT has been retained to perform, within the time requirements of the DISTRICT, or, when no time is specified, then within a commercially reasonable time. Accordingly, unless the CONSULTANT has notified the DISTRICT otherwise, the CONSULTANT warrants that all products, materials, processes or treatments identified in the project documents prepared for the DISTRICT are reasonably commercially available. Any failure by the CONSULTANT to use due diligence under this sub-paragraph will render the CONSULTANT liable to the DISTRICT for any increased costs that result from the DISTRICT's later inability to obtain the specified items or any reasonable substitute within a price range that allows for project completion in the time frame specified or, when not specified, then within a commercially reasonable time.

D. DISTRICT's Right to Terminate for Default. If the CONSULTANT fails to perform or adequately perform any obligation required by this agreement, the CONSULTANT's failure constitutes a Default. If the CONSULTANT fails to satisfactorily cure a Default within ten (10) calendar days of receiving a written notice from the DISTRICT specifying the nature of the Default, the DISTRICT may immediately cancel and/or terminate this Agreement, and terminate each and every right of the CONSULTANT, and any person claiming any rights by or through the CONSULTANT under this Agreement. The rights and remedies of the DISTRICT enumerated in this paragraph are cumulative and shall not limit the DISTRICT's rights under any other provision of this Agreement, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or enacted or established at a later date, that may be available to the DISTRICT against the CONSULTANT.

Attachment A – Exhibit 1

12. **NON-DISCRIMINATION PROVISIONS.** The CONSULTANT shall not discriminate against any employee or applicant for employment because of age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. The CONSULTANT will take positive action to insure that applicants are employed without regard to their age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the DISTRICT setting forth the provisions of this non-discrimination clause.

13. **CONFIDENTIAL INFORMATION.** The DISTRICT may from time to time communicate to the CONSULTANT certain confidential information to enable the CONSULTANT to effectively perform the services to be provided herein. The CONSULTANT shall treat all such information as confidential and shall not disclose any part thereof without the prior written consent of the DISTRICT. The CONSULTANT shall limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the services to be provided herein. The foregoing obligation of this Section 13, however, shall not apply to any part of the information that (i) has been disclosed in publicly available sources of information; (ii) is, through no fault of the CONSULTANT, hereafter disclosed in publicly available sources of information; (iii) is already in the possession of the CONSULTANT without any obligation of confidentiality; (iv) has been or is hereafter rightfully disclosed to the CONSULTANT by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party; or (v) is disclosed according to law or court order.

The CONSULTANT shall not disclose any reports, recommendations, conclusions or other results of the services or the existence of the subject matter of this Agreement without the prior written consent of the DISTRICT. In its performance hereunder, the CONSULTANT shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.

CONSULTANT shall be liable to DISTRICT for any damages caused by breach of this condition, pursuant to the provisions of Section 14.

14. **INDEMNIFICATION AND HOLD HARMLESS.** The CONSULTANT shall indemnify, defend, and hold harmless the DISTRICT, and its officers, officials, agents and employees from any and all claims, demands, costs or liability that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, its employees, agents, and SUB-CONSULTANTS in the performance of services under this Agreement. CONSULTANT's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence or willful misconduct by the DISTRICT or its elected officials, officers, agents, and employees. CONSULTANT's indemnification obligations shall not be limited by the insurance provisions of this Agreement. The DISTRICT AND CONSULTANT expressly agree that any payment, attorney's fees, costs or expense DISTRICT incurs or makes to or on behalf of an injured employee under the DISTRICT 's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this Agreement.

Attachment A – Exhibit 1

15. **INSURANCE.** The CONSULTANT, at its sole cost and expense, shall purchase and maintain, and shall require its SUB-CONSULTANTS, when applicable, to purchase and maintain throughout the term of this agreement, the following insurance policies:

☒ A. If checked, Professional Liability Insurance (errors and omissions) with minimum limits of \$1,000,000 per occurrence.

B. Automobile insurance covering all bodily injury and property damage incurred during the performance of this Agreement, with a minimum coverage of \$1,000,000 combined single limit per accident. Such automobile insurance shall include hired and non-owned vehicles.

C. Comprehensive general liability insurance, with minimum limits of \$1,000,000 combined single limit per occurrence, covering all personal injury, bodily injury and property damage arising out of its operation under this Agreement. Contractual liability shall include coverage of tort liability of another party to pay for bodily injury or property damage to a third person or organization. Contractual liability limitation endorsement is not acceptable.

D. Workers' compensation insurance covering all of CONSULTANT's employees. The CONSULTANT shall comply with all of the provisions of the Worker's Compensation Insurance and Safety Acts of the State of California, the applicable provisions of Division 4 and 5 of the California Government Code and all amendments thereto; and all similar state or Federal acts or laws applicable; and shall indemnify, and hold harmless the DISTRICT and its officers, and employees from and against all claims, demands, payments, suits, actions, proceedings and judgments of every nature and description, including reasonable attorney's fees and defense costs presented, brought or recovered against the DISTRICT or its officers, employees, or volunteers, for or on account of any liability under any of said acts which may be incurred by reason of any work to be performed by the CONSULTANT under this Agreement. That policy shall provide a minimum of \$1,000,000 of employer's liability coverage, and the CONSULTANT shall provide an endorsement that the insurer waives the right of subrogation against the DISTRICT and its respective elected officials, officers, employees, agents and representatives.

E. The aforesaid policies shall constitute primary insurance as to the DISTRICT, its officers, employees, and volunteers, so that any other policies held by the DISTRICT shall not contribute to any loss under said insurance. Said policies shall provide for thirty (30) days prior written notice to the DISTRICT of cancellation or material change.

F. If any required insurance coverage is provided on a "claims made" rather than "occurrence" form, the CONSULTANT shall maintain such insurance coverage for three years after expiration of the term (and any extensions) of this Agreement.

G. Insurance shall be written with only California admitted companies which hold a current policy holder's alphabetic and financial size category rating of not less than A VIII according to the current Best's Key Rating Guide, or a company equal financial stability that is approved by the DISTRICT.

H. Deductibles. All deductibles on any policy shall be the responsibility of the CONSULTANT

I. **Specific Provisions Required.** Each policy required under this section shall expressly provide, and an endorsement shall be submitted to the DISTRICT, that:

a. Said policies, except for the professional liability and worker's compensation policies, shall name the DISTRICT and its officers, agents and employees as additional insureds. The DISTRICT's Additional Insured status must be reflected on additional insured endorsement form CG 20 12, or equivalent, which shall be submitted to the DISTRICT.

Attachment A – Exhibit 1

b. The Policies cannot be canceled, non-renewed or materially changed except after thirty (30) calendar days prior written notice by the CONSULTANT to the DISTRICT by certified mail, as reflected in an endorsement which shall be submitted to the DISTRICT except for non-payment of premium, in which case ten (10) days' notice will be provided.

c. This Agreement shall not take effect until certificate(s) or other sufficient proof that these insurance provisions have been complied with, are filed with and approved by the DISTRICT. If the CONSULTANT does not keep all of such insurance policies in full force and effect at all times during the terms of this Agreement, the DISTRICT may elect to treat the failure to maintain the requisite insurance as a breach of this Agreement and terminate the Agreement as provided herein.

d. The CONSULTANT may obtain additional insurance not required by this Agreement.

16. **LEGAL FEES.** If any party brings a suit or action against the other party arising from any breach of any of the covenants or agreements or any inaccuracies in any of the representations and warranties on the part of the other party arising out of this Agreement, then in that event, the prevailing party in such action or dispute, whether by final judgment or out-of-court settlement, shall be entitled to have and recover of and from the other party all reasonable costs and expenses of suit, including reasonable attorneys' fees.

17. **MEDIATION/ARBITRATION.** If a dispute arises out of or relates to this Agreement, or the breach thereof, the parties agree first to try, in good faith, to settle the dispute by mutual negotiation between the principles, and failing that through nonbinding mediation in San Diego, California, in accordance with the Commercial Mediation Rules of the American Arbitration Association (the "AAA"). The costs of mediation shall be borne equally by the parties.

If a third part dispute or litigation, or both, arises out of, or relates in any way to the services provided under this Agreement, upon the DISTRICT's request, the CONSULTANT, its agents, officers, and employees agree to assist in resolving the dispute or litigation. The CONSULTANTs assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

18. **TERMINATION.**

A. This Agreement may be terminated with or without cause by the DISTRICT. Termination without cause shall be effective only upon 30-day's written notice to the CONSULTANT. During said 30-day period the CONSULTANT shall perform all services in accordance with this Agreement. The CONSULTANT may terminate this agreement upon thirty (30) days prior notice in the event of a continuing and material breach by the DISTRICT of its obligations under this Agreement including but not limited to payment of invoices.

B. This Agreement may also be terminated immediately by the DISTRICT for cause in the event of a material breach of this Agreement that is not cured to the DISTRICT's satisfaction within a ten (10) day prior cure period, or material misrepresentation by the CONSULTANT in connection with the formation of this Agreement or the performance of services, or the failure to perform services as directed by the DISTRICT.

C. Termination with or without cause shall be effected by delivery of written Notice of Termination to the CONSULTANT as provided for herein.

Attachment A – Exhibit 1

D. In the event of termination, all finished or unfinished Memoranda Reports, Maps, Drawings, Plans, Specifications and other documents prepared by the CONSULTANT, whether paper or electronic, shall immediately become the property of and be delivered to the DISTRICT, and the CONSULTANT shall be entitled to receive just and equitable compensation for any work satisfactorily completed on such documents and other materials up to the effective date of the Notice of Termination, not to exceed the amounts payable hereunder, and less any damages caused the DISTRICT by the CONSULTANT's breach, if any. Thereafter, ownership of said written material shall vest in the DISTRICT all rights set forth in Section 6.

E. The DISTRICT further reserves the right to immediately terminate this Agreement upon: (1) the filing of a petition in bankruptcy affecting the CONSULTANT; (2) a reorganization of the CONSULTANT for the benefit of creditors; or (3) a business reorganization, change in business name or change in business status of the CONSULTANT.

F. The termination of the services shall be effective upon receipt of the notice by the CONSULTANT.

19. **NOTICES.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered; or sent by overnight mail (Federal Express or the like); or sent by registered or certified mail, postage prepaid, return receipt requested; or sent by ordinary mail, postage prepaid; or telegraphed or cabled; or delivered or sent by telex, telecopy, facsimile or fax; and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if sent by overnight mail, the business day following its deposit in such overnight mail facility, (iii) if mailed by registered, certified or ordinary mail, five (5) days (ten (10) days if the address is outside the State of California) after the date of deposit in a post office, mailbox, mail chute, or other like facility regularly maintained by the United States Postal Service, (iv) if given by telegraph or cable, when delivered to the telegraph company with charges prepaid, or (v) if given by telex, telecopy, facsimile or fax, when sent. Any notice, request, demand, direction or other communication delivered or sent as specified above shall be directed to the following persons:

To the DISTRICT:

Mike James
Assistant City Manager / Public Works Director
Lemon Grove Sanitation District
3232 Main Street
Lemon Grove, CA 91945-1701

To the CONSULTANT:

Dexter Wilson
Principal Engineer (RCE)
Dexter Wilson Engineering, LLC
2234 Faraday Avenue
Carlsbad, CA 92008

Notice of change of address shall be given by written notice in the manner specified in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent. Any notice, request, demand, direction or other communication sent by cable, telex, telecopy, facsimile or fax must be confirmed within forty-eight (48) hours by letter mailed or delivered as specified in this Section.

Attachment A – Exhibit 1

20. CONFLICT OF INTEREST AND POLITICAL REFORM ACT OBLIGATIONS. During the term of this Agreement, the CONSULTANT shall not perform services of any kind for any person or entity whose interests conflict in any way with those of the DISTRICT OF LEMON GROVE. The CONSULTANT also agrees not to specify any product, treatment, process or material for the project in which the CONSULTANT has a material financial interest, either direct or indirect, without first notifying the DISTRICT of that fact. The CONSULTANT shall at all times comply with the terms of the Political Reform Act and the Lemon Grove Conflict of Interest Code. The CONSULTANT shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the DISTRICT in which the CONSULTANT has a financial interest as defined in Government Code Section 87103. The CONSULTANT represents that it has no knowledge of any financial interests that would require it to disqualify itself from any matter on which it might perform services for the DISTRICT.

If the CONSULTANT violates any conflict of interest laws or any of these provisions in this section, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects the CONSULTANT to liability to the DISTRICT for attorney fees and all damages sustained as a result of the violation.

☐ If checked, the CONSULTANT shall comply with all of the reporting requirements of the Political Reform Act and the DISTRICT OF LEMON GROVE Conflict of Interest Code. Specifically, the CONSULTANT shall:

1. Go to www.fppc.ca.gov
2. Download the Form 700: Statement of Economic Interests
3. Completely fill out the form
4. Submit the form to the Public Works Department with the signed contracts.

The CONSULTANT shall be strictly liable to the DISTRICT for all damages, costs or expenses the DISTRICT may suffer by virtue of any violation of this Paragraph 21 by the CONSULTANT.

21. MISCELLANEOUS PROVISIONS.

A. *Computation of Time Periods.* If any date or time period provided for in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday, then such date shall automatically be extended until 5:00 p.m. Pacific Time of the next day which is not a Saturday, Sunday or federal, state or legal holiday.

B. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument.

C. *Captions.* Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

D. *No Obligations to Third Parties.* Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, or obligate any of the parties hereto, to any person or entity other than the parties hereto.

Attachment A – Exhibit 1

E. *Exhibits and Schedules.* The Exhibits and Schedules attached hereto are hereby incorporated herein by this reference for all purposes.

F. *Amendment to this Agreement.* The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

G. *Waiver.* The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

H. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

I. *Entire Agreement.* This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between the parties as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of any party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.

J. *Successors and Assigns.* This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

K. *Construction.* The parties acknowledge and agree that (i) each party is of equal bargaining strength, (ii) each party has actively participated in the drafting, preparation and negotiation of this Agreement, (iii) each such party has consulted with or has had the opportunity to consult with its own, independent counsel and such other professional advisors as such party has deemed appropriate, relative to any and all matters contemplated under this Agreement, (iv) each party and such party's counsel and advisors have reviewed this Agreement, (v) each party has agreed to enter into this Agreement following such review and the rendering of such advice, and (vi) any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

L. *Severability.* The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

22. RATE SCHEDULE – EFFECTIVE JANUARY 1, 2017

Classification	Hourly Rate
Planning/Design	
Principal Engineer (RCE)	\$210.00
Managing Engineering (RCE)	\$200.00
Project Engineer (RCE)	\$180.00
Senior Engineer (RCE)	\$140.00
Design Engineer (RCE)	\$130.00
Associate Engineer II	\$120.00
Associate Engineer I	\$110.00
Engineering Aide II	\$110.00
Engineering Aide I	\$95.00

Attachment A – Exhibit 1

Drafting/Design	
Senior Designer	\$115.00
Senior Drafter	\$105.00
Drafter II	\$90.00
Drafter I	\$80.00
Clerical	\$65.00

Attachment A – Exhibit 1

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

LEMON GROVE SANITATION DIS.

DEXTER WILSON ENGINEERING, INC.

By: _____
Lydia Romero

By: _____
Dexter Wilson

Executive Director
(Title)

Principal Engineer

(Date)

(Date)

APPROVED AS TO FORM:

By: _____
James P. Lough

By: _____
(Name)

DISTRICT Attorney
(Title)

(Title)

(Date)

(Date)